

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
November 17, 2010**

The Bismarck Planning & Zoning Commission met on November 17, 2010, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Mel Bullinger, Jack Hegedus, Curt Juhala, Ken Selzler, Wayne Yeager, Lisa Waldoch and John Warford.

Commissioners Jo Conmy and Vernon Laning were absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey– Office Assistant III and Charlie Whitman – City Attorney.

Others present were Brad Krogstad, Brent Erickson and Brian Eiseman – 128 Soo Line Drive, Dave Patience – 909 Basin Avenue, Art Goldammer – 3615 Bay Place SE, Mandan, Jim Goetz – 3216 Sandy Lane SE, Mandan, Shirley Billington – 423 Denver Avenue, Gary Johnsrud – 17147 340th Avenue, Starbuck, MN, Scott Lunneborg – 4017 37th Avenue NW, Mandan, Thomas Swafford – 2240 Lakeaires Boulevard, Saint Paul, MN, Adam Shae – 27771 County Road 24, Glenwood, MN 52334 and Scott Helberg – 13919 103rd Street, Becker, MN.

MINUTES

Chairman Yeager called for consideration of the minutes of the October 27, 2010 meeting.

MOTION: Commissioner Warford made a motion to approve the minutes of the October 27, 2010 meeting as received. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Hegedus, Juhala, Selzler, Yeager, Waldoch and Warford voting in favor of the motion.

**CONSIDERATIONS –
ZONING CHANGE FROM A , RR & R5 TO R5 AND PRELIMINARY PLAT –
HORIZON HEIGHTS FIFTH ADDITION
ZONING CHANGE FROM A & R5 TO R5 AND PRELIMINARY PLAT – EAGLE
CREST THIRD ADDITION**

Chairman Yeager called for consideration of the following consent agenda items:

- A. A zoning change from the A-Agricultural, RR-Residential and R5-Residential zoning districts to the R5-Residential zoning district and preliminary plat for Horizon Heights Fifth Addition. The property is 80 lots in 6 blocks on 38.87 acres located in northwest Bismarck, north of Medora Avenue, northwest of Horizon Middle School (a replat of Lots 4 and 5, Block 8, Horizon Heights 4th Addition, all of Auditor's Lot WH and a

portion of Auditor's Lot F1 of the W½ of Section 17, T139N-R80W/Hay Creek Township).

- B. A zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential zoning district and preliminary plat for Eagle Crest Third Addition. The property is 36 lots in 3 blocks on 17.75 acres located along the west side of Valley Drive between High Creek Road and Mustang Drive (part of the NW¼ of Section 20, T139N-R80W/Hay Creek Township).

MOTION: Commissioner Armstrong made a motion to approve the Consent Agenda items A and B calling for a public hearing on both items. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Hegedus, Juhala, Selzler, Yeager, Waldoch and Warford voting in favor of the motion.

PUBLIC HEARING –ZONING CHANGE FROM PUD-PLANNED UNIT DEVELOPMENT TO CG-COMMERCIAL FOR LOT A-1, BLOCK 1, U-RENT SUBDIVISION

Chairman Yeager called for the public hearing for the zoning change from the PUD-Planned Unit Development zoning district to the CG-Commercial zoning district for Lot A-1, Block 1, U-Rent Subdivision. The property is located along the east side of State Street near the intersection of 14th Street North and Mapleton Avenue.

Mr. Tomanek provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change is consistent with the Land Use Plan which identifies the long range use of this area as commercial (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change is compatible with adjacent land uses. Adjacent land uses include commercial properties surrounding this parcel.
3. The subdivision is already annexed and utilities are in place; therefore, the zoning change will not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from the PUD-Planned Unit Development zoning district to the CG-Commercial zoning district

for Lot A-1, Block 1, U-Rent Subdivision from PUD–Planned Unit Development to CG-Commercial.

Chairman Yeager opened the public hearing for the zoning change from the PUD-Planned Unit Development zoning district to the CG-Commercial zoning district for Lot A-1, Block 1, U-Rent Subdivision from PUD – Planned Unit Development to CG - Commercial.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve the zoning change from the PUD-Planned Unit Development zoning district to the CG-Commercial zoning district for Lot A-1, Block 1, U-Rent Subdivision from PUD–Planned Unit Development to CG-Commercial. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Hegedus, Juhala, Selzler, Yeager, Waldoch and Warford voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 1 AND 2 OF BLOCK 1, SLOVEN SECOND SUBDIVISION, TRACT 335 OF THE SW¼ OF SECTION 2, LINCOLN TOWNSHIP, AND AN UNPLATTED ADJACENT TRACT IN THE SW¼ OF SECTION 2, LINCOLN TOWNSHIP (225 SOUTH 26TH STREET)

Chairman Yeager called for the public hearing for a special use permit to allow a junkyard on Lots 1 and 2 of Block 1, Sloven Second Subdivision, Tract 335 of the SW¼ of Section 2, Lincoln Township, and an unplatted adjacent tract in the SW¼ of Section 2, Lincoln Township (225 South 26th Street). The property is located south of East Main Avenue along the east side of 26th Street South, located south of the railroad tracks and north of the Bismarck Public Works Building.

Mr. Greenquist provided an overview of the request and listed the following findings for the special use permit:

1. The proposed use with the recommended conditions is in harmony with the purpose and intent of Title 14 (Zoning) and with the master plan of the City of Bismarck.
2. The proposed use with the recommended conditions will not adversely affect the health and safety of the public and the workers and residents in the area, and will not be detrimental to the use or development of adjacent properties or of the general neighborhood.
3. The proposed use with the recommended conditions will comply with all special regulations established by Section 14-03-08(i) of the Bismarck Zoning Ordinance, and all special conditions necessary for the safety and welfare of the public.

Mr. Greenquist then provided the following additional information:

1. A Special Use Permit was approved for this site in 1990 for a junkyard not to exceed 5-acres. Because the junkyard gradually expanded to 8.7-acres, a new Special Use Permit was needed to bring the facility into compliance. A second Special Use Permit was approved for this site on October 22, 2008. The 2008 approval was for 8.7-acres and included additional conditions.
2. According to Section 14-03-08(h) of the Bismarck Ordinance, a special use must be put into use within twenty-four (24) months of the granting of the special use or it shall lapse and the landowner must re-apply. The required conditions of the 2008 approval have not been implemented and the 24-month period expired on October 22, 2010.
3. A temporary permit for a 12' x 60' construction office was issued on June 17, 2008 for a period of one year (until May 1, 2009). That permit was extended to December 31, 2009 when it expired.
4. On October 11, 2010, the applicant re-applied for a new Special Use Permit. The applicant proposes the following changes from the conditions of the 2008 approval:
 - a) The building was to be located at the southwest corner of the property. The applicant wishes to change the location and put the new building at a more centralized location within the junkyard.
 - b) As required by ordinance, the fence was to be located 15-feet back from the property line. The applicant wishes to move the fence 8-feet closer to the street, 7-feet back from the property line.
 - c) In accordance with City standards, the new sidewalk was to be located 10-feet back from the curb. The applicant wishes to locate the sidewalk 2-feet away from the curb.
 - d) As a special condition of the 2008 approval, the landscaping trees to be located along 26th Street and at the northwest corner of the property were to be a minimum of 8-feet tall at time of planting. The applicant wishes to install trees of 4-feet in height.
5. Previous conditions of the 2008 approval that the applicant did not propose changing are:
 - a) The finished grade at the bottom of the new fence will be equal to or higher than the top of the curb.
 - b) Subject to building permit approval, a fence of 8-feet in height will be installed with color and material to be reviewed by the planning staff and Planning Commissioner Waldoch.
 - c) Tree species are subject to approval by the City Forester.

- d) Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief. Fire hydrant installation was to occur within 5-years of approval of the Special Use Permit.
 - e) Development of the site shall conform to the site plan as approved by the Planning Commission.
6. The provisions for approval of a Special Use Permit for a junkyard as specified in 14-03-08(i) are as follows:
- a) A junkyard may be permitted in a MA or MB Industrial District as a Special Use.
 - b) The total area of the premises shall be a minimum of two (2) acres and a maximum of five (5) acres in size.
 - c) No burning of salvaged material or junk will occur on the premises.
 - d) The buildings comply with the setback requirements of the City zoning regulations.
 - e) The entire junkyard will be enclosed with a fence eight (8) feet in height.
 - f) All junk will be stored within the fenced area.
 - g) The operation is not located immediately adjacent to any arterial street or highway. In 2008 26th Street was classified as a collector street; it is currently in the process of being reclassified as a minor arterial street.
 - h) The operation will be conducted and the area be maintained in such a manner as to prevent unsightliness to the adjacent areas.
 - i) A completely and permanently landscaped setback strip will be installed at the west and northwest edges of the junkyard. After fill material is added to elevate the area, trees will be planted between the new sidewalk and the new fence and at the northwest corner of the site. The land owner and applicant shall be responsible for providing, protecting and maintaining all landscaping materials in healthy growing condition.
 - j) Building permit approvals are subject to the standard site plan review process and approval of a storm water management plan.

Mr. Greenquist said that based on the above findings and additional information, staff recommends a waiver of the 5 acre maximum and approval of the special use permit to allow a junkyard on operation located on 8.67 acres, with the following eight conditions:

1. Fill material will be added to elevate the low areas along the west edge and at the northwest corner of the site to allow the new fence and trees to be installed on elevated ground to better screen the site from 26th Street. Finished grade elevations at the bottom

of the fence shall be equal to or higher than the top of the curb along the east side of 26th Street South. A grading plan is subject to approval by City Engineering;

2. To allow adequate room for snow storage and to allow for adequate safety separation between traffic and pedestrians, the new sidewalk shall be located not less than 10-feet from the curb (see attached email comments from the Director of Public Works and the City Traffic Engineer);
3. To allow adequate room for tree growth between the sidewalk and the fence, to accommodate the sidewalk location as indicated in #2 above, and to be consistent with the ordinance requirement, the fence shall be located 15-feet back from the property line;
4. Consistent with the 2008 approval, fencing color and material is subject to review and approval by staff and Planning Commissioner Waldoch prior to issuance of a building permit;
5. Consistent with the 2008 approval, trees shall not be less than 8-feet tall at time of planting. Tree species will be subject to approval by the City Forester;
6. Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief prior to issuance of the building permit. Fire hydrant installation will occur within 3-years of approval of the Special Use Permit. (note the 2008 approval allowed a 5-year grace period);
7. A new sidewalk along the east side of 26th Street will be installed to city specifications, and;
8. The applicant shall comply with all of the above conditions and install all improvements within one year of the date of approval of the Special Use Permit.

There was discussion and sharing of ideas regarding setbacks, fill material, the sidewalk, the fence and landscaping between the Bismarck Planning & Zoning Commissioners.

Chairman Yeager opened the public hearing for the special use permit to allow a junkyard on Lots 1 and 2 of Block 1, Sloven Second Subdivision, Tract 335 of the SW¼ of Section 2, Lincoln Township, and an unplatted adjacent tract in the SW¼ of Section 2, Lincoln Township (225 South 26th Street).

Charlie Whitman, City Attorney, explained that Northern Metal Recycling has been around for a long time and essentially they are operating as a non-conforming use. He said that Northern Metal Recycling does not need anything from the City unless they want to change how they are operating, build a structure or obtain a building permit. Mr. Whitman stated that Northern Metal Recycling applied for a special use permit because they are interested in making changes and if the changes are not made in a certain amount of time, the special use permit lapses. He concluded by saying there is not an enforcement issue because the City cannot make Northern Metal Recycling use the special use permit. It is granted as a privilege.

Dave Patience, Swenson, Hagen & Co., addressed his concerns with the proposed sidewalk, the fence, landscaping, fill material and amount and the expense of all the proposed conditions. Mr. Patience also presented some other options to the proposed conditions.

Scott Helberg , Northern Metal Recycling, stated that he understands some of the conditions of the special use permit, but would like some consideration to changing other conditions to help keep the costs down. He would like to work with the City in coming up with a compromise that both parties can agree upon and be satisfied with, so the improvements can be made.

Chairman Yeager closed the public hearing.

After some more discussion regarding setbacks, fill material, the fence and landscaping, the Bismarck Planning & Zoning Commissioners reached a general consensus.

MOTION: Based on the findings contained in the staff report, Commissioner Hegedus made a motion to approve waiver of the 5 acre maximum and the special use permit to allow a junkyard on operation located on 8.67 acres, with the following eight conditions:

1. Fill material will be added to elevate the low areas along the west edge and at the northwest corner of the site to allow the new fence and trees to be installed on elevated ground to better screen the site from 26th Street. Finished grade elevations at the bottom of the fence shall be equal to or higher than the top of the curb along the east side of 26th Street South. A grading plan is subject to approval by City Engineering;
2. The improvements along the west edge of the property are subject to dimensional requirements: a) The distance from the face of the curb to the sidewalk will be 10 feet, leaving 9½ feet of grass boulevard between the back of curb and the sidewalk, b) The sidewalk will be 6 feet wide with the east edge of the sidewalk aligned on the property line. The property line is 16 feet back from the face of the curb, c) The fence will be located no less than 7 feet beyond the sidewalk and property line. This places the fence at 23 feet back from the face of the curb;
3. Prior to obtaining a building permit for the fence, the Bismarck Board of Adjustment must approve a variance to reduce the front yard setback distance;
4. For pedestrian safety and for better truck-driver visibility, the fence on either side of the entrance road shall be tapered back (to allow for sight triangles as defined in Section 14-02-03 of the Bismarck Zoning Ordinance);
5. Fencing color and material is subject to review and approval by staff and Planning Commissioner Waldoch prior to issuance of a building permit;

6. A final landscape plan for the site, including the location, species and size of plant material to be installed, will be developed by a joint effort between the applicant's consultant and City staff;
7. Fire hydrant location and interior access route are subject to approval by the Bismarck Fire Chief prior to issuance of the building permit. Fire hydrant installation will occur within 3-years of approval of the Special Use Permit;
8. A new sidewalk along the east side of 26th Street will be installed to city specifications; and
9. The applicant shall comply with all of the above conditions and install all improvements within one year of the date of approval of the Special Use Permit (by November 17, 2011).

Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Bullinger, Hegedus, Juhala, Selzler, Yeager, Waldoch and Warford voting in favor of the motion.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:12 p.m. to meet again on December 15, 2010.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman